

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RONALD JEFFREY PRIBLE, Jr.,	§	
	§	
Petitioner,	§	
	§	
v.	§	CAUSE NO. 4:09-cv-01896
	§	
BOBBY LUMPKIN, Director, Texas	§	
Department of Criminal Justice, Cor-	§	
rectional Institutions Division,	§	CAPITAL HABEAS CASE
	§	
Respondent.	§	

UNOPPOSED MOTION TO SUBSTITUTE COUNSEL

TO THE HONORABLE KEITH P. ELLISON:

Petitioner Ronald Jeffrey Prible, Jr., by and through his undersigned counsel, and pursuant to 18 U.S.C. § 3599(e), moves the Court to permit James Rytting to withdraw as his counsel and appoint the Federal Public Defender for the Western District of Texas, through her Capital Habeas Unit, in Mr. Rytting's place. This Motion is based on the files and records in this case and the following points and authorities.

On July 1, 2008, in Cause No. 4:08-mc-00316, this Court appointed Phil Hilder and James Rytting to represent Mr. Prible in federal habeas corpus proceedings. Ex. A. On November 18, 2015, in the present cause, this Court appointed Gretchen Scardino to serve as Mr. Prible's co-counsel alongside Mr. Rytting. Ex. B (Order, ECF No. 106).

Pursuant to the terms of § 3599(e) and *Harbison v. Bell*, 556 U.S. 180 (2009), this Court requires that counsel appointed to represent a capital habeas petitioner “shall continue through ‘every subsequent stage of judicial proceedings ... and all available post-conviction process, together with applications for stays of execution and other appropriate motions and procedures,’ including ‘competency proceedings and proceedings for executive or other clemency as may be available.’” Order, ECF No. 106, at 1-2 (quoting § 3599(e)).

Section 3599(e) requires that Messrs. Hilder and Rytting continue representing Mr. Prible unless either or both of them is replaced by similarly qualified counsel. The Capital Habeas Unit (“CHU”) in the Western District of Texas is able to provide qualified counsel in their place. The CHU is staffed by experienced capital habeas attorneys, investigators and mitigation specialists, and paralegals. As an independently funded office, the CHU can provide investigative and expert assistance to Mr. Prible’s case without burdening this Court or the Fifth Circuit. CHU staff have extensive experience representing clients like Mr. Prible who have been through the courts and may seek clemency or a stay of execution through a successive application or the “other appropriate motions and procedures” contemplated in § 3599(e).

CERTIFICATE OF CONFERENCE

On February 2, 2024, undersigned counsel for Petitioner emailed counsel for Respondent, Assistant Attorney General Jay Clendenin, to confer about this motion. Undersigned counsel are authorized to state Respondent is not opposed to the substitution.

FOR THESE REASONS, Mr. Prible respectfully requests this Court enter the attached proposed order substituting the Federal Public Defender and her Capital Habeas Unit for appointed counsel Phil Hilder and James Rytting.

DATED: February 2, 2024.

Respectfully submitted,

MAUREEN FRANCO
FEDERAL PUBLIC DEFENDER

/s/ Tivon Schardl
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February 2024, I electronically filed the foregoing Petitioner's Motion to Substitute Counsel and Proposed Order with the Clerk of Court using the CM/ECF system which will serve the same on all counsel of record.

/s/ Tivon Schardl

TIVON SCHARDL

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O R D E R

On this date came on to be considered Petitioner's Motion to Substitute Counsel. The Court, after considering same, is of the opinion that it is in the interests of justice to relieve Phil Hilder and James Rytting from their appointment in this case and to appoint the Federal Public Defender and her Capital Habeas Unit in his place. That is, this Court finds the motion should be GRANTED. Accordingly, it is

ORDERED that attorneys Phil Hilder and James Rytting are permitted to withdraw from this case and the Federal Public Defender and her Capital Habeas Unit are substituted in their place.

Signed this _____ day of _____ 2024.

Hon. Keith P. Ellison, U.S. District Judge